

**DECISION**



*muting*  
*PL II*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:**

**B-218030**

**DATE:**

April 30, 1985

**MATTER OF:**

Atkinson Dredging Company

**DIGEST:**

1. Protest against cancellation of invitation for bids filed more than 10 working days after protester's receipt of notification of cancellation is untimely.
2. Protest to GAO more than 10 working days after initial adverse agency action on protest originally filed with agency is untimely.

Atkinson Dredging Company protests cancellation of invitation for bids (IFB) No. DACW65-85-B-0001, which had been set aside for small business concerns by the U.S. Army Corps of Engineers. Atkinson also protests resolicitation of the same requirement for maintenance dredging of Tangier Island channels in Accomack County, Virginia through issuance of IFB No. DACW65-85-B-0028, which is not set aside for small businesses.

We dismiss the protest.

The first solicitation was issued on October 17, 1984. Atkinson and one other small business concern submitted bids, and the contracting officer concluded that both offered unreasonably high prices. On November 27, the agency notified Atkinson that all bids had been rejected and the solicitation canceled. In a letter to the Army dated November 29, Atkinson listed a number of reasons why it believed that the agency's cost estimate for the procurement, upon which the reasonableness of bid prices had been judged, was too low. It did not, however, protest the IFB cancellation.

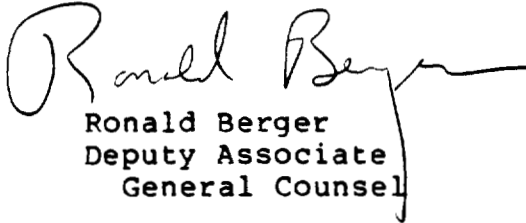
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On November 30, the Army issued a Pre-solicitation Notice (Standard Form 1417) to firms on its prospective bidders' list announcing that a solicitation for the dredging requirement would be issued on December 21, and that the solicitation would not be restricted to small businesses. The notice also contained a description of the work, the date for completion, the date of bid opening, the estimated cost range of the project, and the charge for the solicitation documents. Based upon the Pre-solicitation Notice, Atkinson protested to the agency in a letter dated December 18. The company again questioned the government's cost estimate and complained that the Army would create an auction by resoliciting without changing the scope of work, since the initial bids had been publicly disclosed. Three days later, the Army issued an unrestricted IFB with the same statement of work that had been contained in the first solicitation. In its protest to our Office, contained in submissions filed on January 18 and January 22, Atkinson 1) challenges the cancellation of the original IFB and the government's cost estimate upon which the cancellation was based; 2) argues that the resolicitation provides a competitive advantage to other firms and will create an auction; and 3) contends that failure to set aside the second IFB for small business contravenes law and established procurement policy.

We find that Atkinson's protest of the cancellation of the original IFB is untimely, since it was not filed within 10 working days after the company knew of the basis for its protest, i.e., when it received the Army's November 27 notification letter. 4 C.F.R. § 21.2(a)(2) (1985). We also find that Atkinson's protest of the Army's resolicitation of the identical requirement on an unrestricted basis is untimely. If a protest is filed initially with the contracting agency, any subsequent protest must be filed with our Office within 10 working days after knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3). In this case, the Army's December 21 issuance of the second IFB after Atkinson had protested to the agency on December 18

constituted initial adverse agency action on the protest. Atkinson's protest, filed 18 working days later, is untimely.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel